



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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FEB 12 2015

RE: MUR 6775
Hillary Clinton
Friends of Hillary and Shelly Moskwa in her
official capacity as treasurer

Dear Ms. Utrecht and Mr. Kleinfeld:

On January 29, 2014, the Federal Election Commission ("Commission") notified your clients, Hillary Clinton and Friends of Hillary and Shelly Moskwa in her official capacity as treasurer, of a complaint designated MUR 6775 alleging violations of the Federal Election Campaign Act of 1971, as amended.

On February 10, 2015, the Commission found that there is no reason to believe that Hillary Clinton violated 52 U.S.C. § 30102(e)(1) (formerly 2 U.S.C. § 432(e)(1)) by failing to register with the Commission as a candidate. The Factual and Legal Analysis, which explains this finding by the Commission, is enclosed for your information.

On the same date, the Commission considered additional recommendations but there were an insufficient number of votes for the Commission to approve a recommendation related to whether Hillary Clinton and Friends of Hillary and Shelly Moskwa in her official capacity as treasurer violated 11 C.F.R. §§ 100.72(a) and 101.131(a) by accepting or authorizing the receipt of excessive and prohibited contributions. Accordingly, the Commission closed its file in this matter. A Statement of Reasons further explaining the basis for this determination by the Commission will follow.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003); Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

If you have any questions, please contact Allison T. Steinle, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



William A. Powers
Assistant General Counsel

[Enclosure]

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **MUR:** 6775

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7 **RESPONDENTS:** Hillary Clinton
8 Friends of Hillary and Shelly Moskwa in her
9 Official Capacity as Treasurer
10

11 **I. INTRODUCTION**

12 This matter was generated by a Complaint filed with the Federal Election Commission
13 ("Commission") by Stop Hillary PAC, alleging violations of the Federal Election Campaign Act
14 of 1971, as amended, (the "Act") by Ready for Hillary PAC and Amy Wills Gray in her Official
15 Capacity as Treasurer, Hillary Clinton, and Friends of Hillary and Shelly Moskwa in her Official
16 Capacity as Treasurer. In January 2014, Ready for Hillary PAC sent an e-mail to numerous
17 recipients offering free "Ready for Hillary" bumper stickers and otherwise encouraging support
18 for Clinton's potential candidacy. The Complaint alleges that Ready for Hillary PAC's use of an
19 e-mail list obtained from Friends of Hillary to distribute this e-mail indicates that Clinton or her
20 agents authorized the message, that the contributions and expenditures of Ready for Hillary PAC
21 in connection with Clinton's possible candidacy therefore must be attributed to Clinton herself,
22 and that Clinton triggered candidate status as a result.

23 After reviewing the Complaint, Responses, and other available information, the
24 Commission concludes that the facts presented here do not suggest that Clinton became a
25 candidate under the Act.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Background**

3 On January 25, 2013, Ready for Hillary PAC registered with the Commission as an
4 independent expenditure-only political committee that supports more than one candidate.¹
5 Ready for Hillary PAC states that its purpose is to “encourage Hillary [Clinton] to run” and show
6 Clinton that if she decides to run, she will have a “grassroots army of supporters behind her who
7 are ready to help her win.”² On May 28, 2014, Ready for Hillary PAC provided notice to the
8 Commission through a Miscellaneous Form 99 that it had converted to a non-connected political
9 committee that maintains a “non-contribution” account and created an additional depository
10 account for the purpose of making contributions to candidates and committees in accordance
11 with *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011).³ Ready for Hillary PAC has raised
12 approximately \$8.2 million and spent approximately \$7.4 million through the first half of 2014.⁴

13 Friends of Hillary served as Clinton’s principal authorized campaign committee for the
14 office of Senator from New York in 2000 and 2006. Friends of Hillary has not terminated.
15 Hillary Clinton for President is Clinton’s former authorized campaign committee for the office of

¹ Ready for Hillary PAC, Statement of Organization (filed Jan. 25, 2013).

² *See* Compl. at 2, Ex. G.

³ Ready for Hillary PAC, Form 99 (filed May 28, 2014).

⁴ Ready for Hillary PAC, 2014 July Quarterly Rpt. (filed July 15, 2014); Ready for Hillary PAC, 2013
Year-End Report (amended Sept. 2, 2014).

1 President in 2008.⁵ After Hillary Clinton for President paid off its debts and terminated, all of its
2 remaining assets were consolidated in Friends of Hillary.⁶

3 According to the Complaint, Ready for Hillary PAC used a mailing list owned by Friends
4 of Hillary to distribute an e-mail to members of that list in January 2014.⁷ The Complaint
5 attaches an article from a periodical's online blog discussing the e-mail, as well as what appears
6 to be a copy of the content of the e-mail dated January 5, 2014.⁸ Those sources reflect that the
7 e-mail originated from "General Wes Clark [info@hillaryclinton.com]," with the subject line
8 "Free Hillary Clinton Bumper Sticker." *Id.* The text reads as follows:

9 Have you picked up your free Ready for Hillary bumper sticker yet?

10
11 Please take a moment to read this special message from General Wes Clark.
12 Ready For Hillary PAC is solely responsible for the content of this message.

13
14 Grassroots movements happen when neighbors talk to neighbors and tell them
15 to get involved.

16
17 One of the best ways to spark these conversations about Hillary potentially
18 running in 2016 is by showing your support right now.

19
20 Have you picked up your free Ready for Hillary bumper sticker yet?

21
22 <https://www.readyforhillary.com/Free-Stickers>

23
24 Hillary has what it takes to be the next President of the United States. But
25 today, as she decides whether to run she needs to see our support.

⁵ Hillary Clinton, Friends of Hillary, and Shelly Moskwa Resp. at 2-3 ("Clinton Resp."). Hillary Clinton for President terminated in February 2013. Hillary Clinton for President, Termination Approval (Feb. 26, 2014).

⁶ Clinton Resp. at 3. The transfer of Hillary Clinton for President's assets to Friends of Hillary appears to have been permissible under 11 C.F.R. § 110.3(c)(4), which addresses transfers between former campaign committees.

⁷ Compl. at 1-2.

⁸ See *id.*, Ex. A (attaching Zcke J. Miller, *Hillary Clinton Campaign Rents Email List to Pro-Hillary Super PAC*, TIME, Jan. 5, 2014, available at <http://swampland.time.com/2014/01/05/hillary-clinton-rents-email-list-to-pro-hillary-super-pac/>); *id.*, Ex. B (attaching *She Makes It Official?*, DRUDGE REPORT (Jan. 5, 2014), <http://drudgereport.com/flash3b.htm>).

1 Now is the time to get our support for Hillary organized and ready for 2016.
2 Claim your free sticker: Proudly put your support for Hillary on display and
3 tell your friends to do the same.
4

5 Thanks for joining with us,
6

7 General Wes Clark.⁹

8 The hillaryclinton.com URL address is registered to Friends of Hillary.¹⁰ According to
9 media reports cited in the Complaint, Clinton's 2008 presidential campaign rented its e-mail list
10 to Ready for Hillary PAC in connection with the January 2014 e-mail message.¹¹ Seth
11 Bringman, a spokesman for Ready for Hillary PAC, reportedly stated that Ready for Hillary PAC
12 rented the hillaryclinton.com e-mail list to "connect with [Clinton's] past supporters."¹²

13 Clinton and Friends of Hillary's joint Response states that Friends of Hillary provided its
14 mailing list to Ready for Hillary PAC for fair market value.¹³ The Response includes a copy of
15 the licensing agreement between Ready for Hillary PAC and Friends of Hillary, dated December
16 10, 2013.¹⁴ The agreement was signed by Friends of Hillary's treasurer, Shelly Moskwa, and
17 Ready for Hillary PAC's executive director, Adam Parkhomenko, and indicates that payment
18 was to be made through Trilogy Interactive ("Trilogy") upon execution of the agreement.¹⁵
19 Although the Response states that Friends of Hillary set the value of the list after consulting

⁹ *Id.*, Ex. B.

¹⁰ *Id.* at 1-2, Ex. D.

¹¹ *Id.*, Ex. A.

¹² *Id.*

¹³ Clinton Resp. at 5.

¹⁴ *Id.*, Ex. C

¹⁵ *Id.*

1 “outside vendors,” it otherwise provides no information corroborating the value of the list or
2 explaining the method used to conclude its value was \$136,841.70.¹⁶ Moreover, despite Friends
3 of Hillary’s retention of Trilogy as its broker, Moskwa avers without further elaboration that she
4 was responsible for arranging for entities to rent the list, including Ready for Hillary PAC.¹⁷ As
5 to Trilogy’s role, its employee Eric Wilfong represents that he was responsible for “managing
6 and overseeing” the list rentals “conducted by” Friends of Hillary.¹⁸

7 Friends of Hillary asserts that it rented its list to 88 lessees in total and that Ready for
8 Hillary PAC paid the same rate as its other lessees, including non-political entities.¹⁹ Friends of
9 Hillary’s disclosure reports indicate that it received 18 payments for list rentals between 2013
10 and 2014, ranging in amount from \$260 to \$203,683. Friends of Hillary reported these payments
11 as coming from Trilogy, another list brokerage firm, and directly from campaign committees.

12 Wilfong states that he explained to Friends of Hillary that the hillaryclinton.com URL
13 address should appear as the sender of the e-mail to prevent SPAM blocking and consistent with
14 industry best practices.²⁰ According to the Response, in connection with its efforts to lease its
15 e-mail list and to preclude licensee requests for refund, Friends of Hillary sought to ensure that
16 any e-mails a potential licensee may send would be identified by the recipient as “legitimate”

¹⁶ *Id.*, Ex. A.

¹⁷ *Id.*, Ex. A ¶¶ 6-7.

¹⁸ *Id.*, Ex. D ¶ 2. Wilfong does not address the fair market value of the list in his affidavit, nor does he attest that Ready for Hillary PAC paid Trilogy for the use of the list or that all renters paid the same rate. *Id.*

¹⁹ *Id.* at 3.

²⁰ *Id.*, Ex. D ¶ 4.

1 and would be less likely to be blocked as SPAM.²¹ Finally, the Response asserts that Clinton
2 and Friends of Hillary did not approve, agree to, or edit the contents of the e-mail in question.²²

3 **B. Legal Analysis**

4 The Complaint alleges that by conveying the mailing list to Ready for Hillary PAC and
5 permitting it to use the hillaryclinton.com URL, Clinton and Friends of Hillary were acting "in
6 furtherance" of Ready for Hillary PAC's stated goals and therefore gave their consent to Ready
7 for Hillary PAC to accept contributions and make expenditures on Clinton's behalf.²³ The
8 Complaint asserts that, by giving this consent, Clinton triggered candidate status under the Act
9 and, for the same reason, that Ready for Hillary PAC became an authorized committee of
10 Clinton that improperly failed to register as such with the Commission.²⁴ Moreover, the
11 Complaint alleges that, because Ready for Hillary PAC is in truth Clinton's authorized
12 committee, it is violating the Act by supporting more than one candidate and by accepting
13 excessive and prohibited contributions on Clinton's behalf.²⁵ Finally, the Complaint alleges that
14 the e-mail did not include the proper disclaimer because it failed to acknowledge that it was
15 authorized by Clinton or that Ready for Hillary PAC paid for the communication.²⁶

16 Under the Act, an individual is deemed a "candidate" if he or she receives contributions
17 or makes expenditures in excess of \$5,000, or consents to another doing so on the individual's

²¹ *Id.* at 6-7.

²² *Id.* at 2.

²³ Compl. at 2-3.

²⁴ *Id.* at 3.

²⁵ *Id.*

²⁶ *Id.* at 3-4.

1 behalf.²⁷ Once that threshold is satisfied, the candidate has 15 days to designate a principal
2 campaign committee by filing a Statement of Candidacy with the Commission.²⁸ The principal
3 campaign committee, in turn, must file a Statement of Organization within ten days of its
4 designation and must file disclosure reports with the Commission in accordance with 52 U.S.C.
5 §§ 30104(a) and (b) (formerly 2 U.S.C. §§ 434(a) and (b)).²⁹ In addition, a candidate may not
6 designate a political committee that supports or has supported more than one candidate as his or
7 her authorized committee, unless that political committee is the national political party of the
8 candidate for office of President nominated by that party or is a joint fundraising committee.³⁰

9 The Commission has created a limited exemption to the definitions of contribution and
10 expenditure — and therefore to the \$5,000 candidacy threshold — to allow individuals to
11 conduct certain activities designed to evaluate a potential candidacy (*e.g.*, to “test the waters”).³¹
12 Funds received and payments made “solely for the purpose of determining whether an individual
13 should become a candidate” are not considered contributions or expenditures under the Act.³²

²⁷ 52 U.S.C. § 30101(2)(A), (B) (formerly 2 U.S.C. § 431(2)(A), (B)); 11 C.F.R. § 100.3(a).

²⁸ 52 U.S.C. § 30102(e)(1) (formerly 2 U.S.C. § 432(e)(1)); 11 C.F.R. § 101.1(a).

²⁹ 52 U.S.C. § 30103(a) (formerly 2 U.S.C. § 433(a)); 11 C.F.R. § 102.1(a).

³⁰ 52 U.S.C. § 30102(e)(3)(A) (formerly 2 U.S.C. § 432(e)(3)(A)); 11 C.F.R. § 102.13(c).

³¹ 11 C.F.R. §§ 100.72, 100.131. Commission regulations describe five non-exhaustive examples of activities that indicate that an individual is not merely testing the waters, but has decided to become a candidate for federal office: (1) using general public political advertising to publicize his or her intention to campaign for federal office; (2) raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activity designed to amass campaign funds that would be spent after he or she becomes a candidate; (3) making or authorizing written or oral statements that refer to him or her as a candidate for a particular office; (4) conducting activities in close proximity to the election or over a protracted period of time; and (5) taking action to qualify for the ballot under state law. *Id.*

³² *Id.* These funds, however, are subject to the limitations and prohibitions of the Act. *Id.*

1 An individual who is testing the waters need not register or file disclosure reports with the
2 Commission unless and until the individual subsequently decides to run for federal office.³³

3 Thus, even assuming that Clinton authorized Ready for Hillary PAC to receive and spend
4 funds exceeding \$5,000 on her behalf as the Complaint alleges, she would not become a
5 candidate as a result of those activities so long as they were related only to testing the waters.³⁴

6 And the available record here reflects that Clinton and Ready for Hillary PAC have confined
7 their activities solely to evaluating a *potential* candidacy. Clinton has publicly stated that she has
8 not decided whether she will run for the office of President in 2016,³⁵ and no other information
9 indicates that she has taken steps designed to amass campaign funds for a future candidacy.³⁶

10 With respect to Ready for Hillary PAC, the record reflects that it seeks to encourage Clinton to
11 run and to build support for a potential Clinton candidacy,³⁷ not an existing candidacy. Ready

³³ See, e.g., Advisory Op. 1981-32 (Askew); Advisory Op. 1979-26 (Grassley).

³⁴ See 11 C.F.R. §§ 100.72, 100.131.

³⁵ See, e.g., Clinton Resp., Ex. B (attaching Lauren Effron, *Hillary Clinton on 2016 Presidential Run: 'I'll Make that Decision Sometime Next Year'*, ABC NEWS, Dec. 18, 2013 (quoting Clinton as stating "I haven't made up my mind. . . . It's such a difficult decision, and it's one that I'm not going to rush into . . . and I don't think we should be looking at the next election"); Paige Lavender, *Hillary Clinton: 'I'm Both Pragmatic and Realistic' About Running for President in 2016*, HUFF POST POLITICS, Sept. 22, 2013 (quoting Clinton as stating "I'm not in any hurry. I think it's a serious decision, not to be made lightly, but it's also not one that has to be made soon."); Carrie Dann, *Hillary Clinton Talks Benghazi, Gates, 2016*, NBC POLITICS, Jan. 27, 2014 (quoting Clinton as stating "I don't know . . . I'm not thinking about it" when asked about "her plans for 2016" at a National Automobile Dealers Association convention); Aliyah Frumin, *Hillary Clinton Insists on 2016: 'I Don't Know'*, HARDBALL WITH CHRIS MATTHEWS, Jan. 27, 2014 (same); Brian Knowlton, *Bill Clinton Says He's Unsure of Wife's 2016 Plans*, N.Y. TIMES, Sept. 23, 2012 (quoting Bill Clinton as stating "I don't know" and that he had "no earthly idea" when asked whether his wife would decide to run in 2016 on CBS's *Face the Nation*)).

³⁶ See *id.*

³⁷ Ready for Hillary PAC's purpose appears analogous to that of a draft committee. Although the term "draft committee" is not defined in the Act or Commission regulations, some courts have addressed the concept of draft committees in assessing the political committee status of certain groups. See *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380 (D.C. Cir. 1981) ("MNPL") (holding that Congress had never acted expressly to bring "draft" groups within the coverage of the contribution limitations); *FEC v. Citizens for Democratic Alternatives in 1980*, 655 F.2d 397 (D.C. Cir. 1981) (adopting reasoning of MNPL); *FEC v. Florida for Kennedy Committee*, 681 F.2d 1281 (11th Cir. 1982) (holding that "draft" groups were not within the Act's jurisdiction

1 for Hillary PAC's materials are framed in terms of encouraging Clinton to run, and do not
2 expressly refer to Clinton as a candidate.³⁸ The e-mail in question, for example, states that
3 showing Clinton support will "spark . . . conversations about Hillary *potentially* running in
4 2016."³⁹ It further states that "today, as *she decides whether to run* she needs to see our
5 support."⁴⁰ Thus, it appears that the actions of both Clinton and Ready for Hillary PAC are
6 aimed at evaluating the feasibility of her candidacy and do not signify that Clinton has decided to
7 become a candidate.⁴¹

8 Because neither Clinton nor Ready for Hillary PAC appear to have received contributions
9 or made expenditures in excess of \$5,000 in connection with seeking her nomination or election
10 to federal office, Clinton would not have triggered candidate status under the Act even if she had

because there is no candidate, and political committees must be under the control of a candidate or have the major purpose to nominate or elect a candidate); *see also* *Unity08 v. FEC*, 596 F.3d 861 (D.C. Cir 2010) (holding that Unity08, which sought to facilitate an online nominating process to choose a mixed party ticket for President and Vice President, was not subject to regulation as a political committee unless and until it selected a "clearly identified" candidate); *FEC v. GOPAC*, 917 F. Supp. 851 (D.D.C. 1996) (holding that organization's support for a "farm team" of future candidates did not constitute support for a federal candidate for purposes of determining organization's major purpose).

The Commission also has promulgated regulations concerning names for political committees that reference draft committees. *See* 11 C.F.R. § 102.14(b)(2) (providing that a "political committee established solely to draft an individual or to encourage him or her to become a candidate may include the name of such individual in the name of the committee provided the committee's name clearly indicates that it is a draft committee"). In Advisory Op. 1995-09 (NewtWatch PAC), the Commission determined that the naming restrictions apply to the use of an individual's first name if it clearly conveys the identity of the candidate. Because Ready for Hillary PAC is registered with the Commission as a hybrid PAC that supports more than one candidate, however, it is not clear that it was established "solely to draft" Clinton and thus falls within the scope of the draft committee regulation. Regardless, because we conclude that Clinton has not become a candidate, the provisions of the Act and Commission regulations that generally prohibit an unauthorized committee from "includ[ing] the name of any candidate in its name" are inapposite here. *See* 52 U.S.C. § 30102(e)(4) (formerly 2 U.S.C. § 432(e)(4)); 11 C.F.R. § 102.14(a); Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees, 59 Fed. Reg. 17,267, 17,269 (Apr. 12, 1994).

³⁸ *See* Ready for Hillary, <https://www.readyforhillary.com> (last visited Sept. 16, 2014).

³⁹ Compl., Ex. B (emphasis added).

⁴⁰ *Id.* (emphasis added).

⁴¹ *See, e.g.*, Advisory Op. 1981-32 (Askew).

1 consented to the activities of Ready for Hillary PAC. Accordingly, the Commission finds no
2 reason to believe that Clinton violated 52 U.S.C. § 30102(e)(1) (formerly 2 U.S.C. § 432(e)(1))
3 by failing to register with the Commission as a candidate. Further, because Clinton does not
4 appear to be a candidate under the Act, she is not required to designate a principal campaign
5 committee, and the Commission finds no reason to believe that Clinton violated 52 U.S.C.
6 § 30102(e)(1) (formerly 2 U.S.C. § 432(e)(1)) by failing to designate a principal campaign
7 committee.

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